

FATEMAH AZIZIAN, et al.)	Civil No. 3:03 CV-03359 SBA
)	
Plaintiffs,)	<u>CLASS ACTION</u>
)	
vs.)	
)	FINAL JUDGMENT GRANTING FINAL
FEDERATED DEPARTMENT STORES,)	APPROVAL TO THE CLASS ACTION
INC., et al.)	SETTLEMENT WITH ALL
)	DEFENDANTS AND AWARDED
Defendants.)	ATTORNEYS' FEES AND COSTS

1 This matter is before this Court on the motion for final approval of this class
2 action settlement.

3 By Order Conditionally Certifying Settlement Class; Granting Motion for
4 Preliminary Approval of Class Action Settlement; and Scheduling Hearing on Final
5 Settlement Approval, dated November 21, 2003 ("Preliminary Approval Order"), this Court
6 conditionally certified the settlement class herein and granted preliminary approval to the
7 proposed settlement. This Court also ordered that notice of the settlement be published to the
8 class members in accordance with the Preliminary Approval Order.

9 In compliance with that order, notice was published to the members of the
10 class in January-February of 2004 and posted on a dedicated website.

11 On January 11, 2005, and March 8, 2005, the parties appeared at the final
12 approval and fairness hearing represented by their respective attorneys of record. An
13 opportunity to be heard was given to all persons requesting to be heard. This Court presided
14 at the final approval and fairness hearing. This Court has carefully reviewed and considered
15 all reports and recommendations of the Special Master, the Honorable Charles B. Renfrew, as
16 well as all of the pleadings filed in connection with both hearings, all of the presentations and
17 evidence submitted to the Special Master and the Court in support of the settlement, and the
18 submissions and arguments of all objectors.

19 The proposed settlement having been duly noticed, and having been fully
20 considered by the Court,

21 IT IS HEREBY ADJUDGED, ORDERED AND DECREED that:

22 1. This Court has jurisdiction over the claims of the plaintiffs and of the
23 members of the class asserted in this proceeding, personal jurisdiction over the settling parties
24 (including all class members), and subject matter jurisdiction to approve the settlement as set
25 forth in the Settlement Agreement previously filed with this Court.

26 2. For the reasons stated on the record by the Court at the hearing of
27 January 11 and March 8, the notice given to the members of the class was reasonably
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1 calculated under the circumstances to apprise them of the pendency of this action, all material
2 elements of the proposed settlement, their opportunity to exclude themselves from, to object
3 to, or to comment on the settlement and to appear at the settlement hearing. The notice was
4 reasonable and the best notice practicable under the circumstances; was due, adequate and
5 sufficient notice to all class members; and complied fully with the laws of the United States
6 and of the Federal Rules of Civil Procedure, due process and any other applicable rules of
7 court. A full opportunity has been afforded to the members of the class to participate in this
8 hearing, and all members of the class and other persons wishing to be heard have been heard.
9 Accordingly, the Court determines that all members of the class who have not excluded
10 themselves from this litigation, are bound by this Final Judgment and Decree.

11 3. Sixty-two (62) members of the class requested to be excluded from this
12 settlement, and a list of such class members is attached hereto as Exhibit 1. These individuals
13 are hereby found to have properly excluded themselves from the Settlement Class and this
14 Final Judgment and Decree shall not be binding on them.

15 4. On November 21, 2003, this Court preliminarily approved certification
16 of a Settlement Class defined as:

17 All persons who currently reside in the United States and who
18 purchased Department Store Cosmetic Products in the United States,
19 which products were manufactured, distributed and/or sold by the
20 Manufacturer Defendants or Department Store Defendants, at any
21 time during the period May 29, 1994 through July 16, 2003 (the
22 "Class Period"). Excluded from this Settlement Class are all
employees, officers, directors or agents (including attorneys) of any
defendant, as well as any judge, justice or judicial officer presiding
over this matter, and each such person's immediate family
("Settlement Class").

23 5. For purposes of this settlement, the term "Department Store Cosmetic
24 Products" means the full range of high-end, "prestige" or specialty beauty and cosmetic
25 products and product lines (whether established, discontinued or new) including, but not
26 limited to, color products, treatments and fragrances which are or were manufactured,
27 distributed and/or sold by the Manufacturer Defendants or Department Store Defendants
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1 under various brand names during the Class period. Department Store Cosmetic Products are
2 sold primarily through traditional department and/or specialty stores, ("Retail Stores"),
3 including such stores owned or operated by the Department Store Defendants, who, in turn,
4 sell such products to the Plaintiffs and members of the Settlement Class. The term
5 "Department Store Cosmetic Products" excludes products and product lines sold principally
6 through mass distribution channels.

7 6. Class certification is an appropriate method for protecting the interests
8 of the class members and resolving the common issues of fact and law arising out of the
9 existence of the alleged violations of federal and state antitrust laws.

10 7. Rule 23(b)(3), Federal Rules of Civil Procedure, provides for class
11 certification when there is an ascertainable class and a well-defined community of interest
12 among class members.

13 8. For the reasons stated by the Court at the hearings of January 11 and
14 March 8, 2005, as well as those identified in the Special Master's various reports and
15 recommendations, the Court finds for the purposes of this settlement that: (i) the members of
16 the class are so numerous that joinder would be impractical; (ii) there is a commonality of
17 interests between the Plaintiffs and members of the class; (iii) there are questions of law and
18 fact which are common to the class and those common questions predominate over individual
19 questions; (iv) the Plaintiffs' claims are typical of the claims of the absent members of the
20 class; and (v) Plaintiffs will fairly and adequately represent the interests of the absent
21 members of the class.

22 9. The class meets the predominance and superiority requirements.
23 Common issues of fact and law predominate, for the claims of members of the class all hinge
24 on whether a conspiracy existed, and whether it resulted in supra-competitive prices for
25 Department Store Cosmetic Products. This class action is superior to individual actions
26 because, given the substantial costs associated with litigating an individual action and the
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1 relatively small amount of recoverable damages per individual, the Settling Defendants would
2 likely pay no damages absent class treatment of the claims of the class members.

3 10. Accordingly, pursuant to Rule 23(e), Federal Rules of Civil Procedure,
4 this Court finds that the applicable requirements of Rule 23, Federal Rules of Civil Procedure,
5 have been satisfied with respect to this settlement and makes final its conditional certification
6 of the Settlement Class (excluding those persons listed in Exhibit 1) for settlement purposes
7 only.

8 11. For the reasons stated on the record at the January 11 and March 8
9 hearings, as well as those identified in the Special Master's various reports and
10 recommendations, this Court hereby grants final approval to the settlement and finds that it is
11 fair, reasonable and adequate, and in the best interests of the class as a whole. The objections
12 that have been filed have been considered by the Court and are overruled. The proposed
13 settlement is the product of arm's-length, serious, informed and non-collusive negotiations
14 between experienced and knowledgeable counsel who have actively prosecuted and defended
15 this litigation for over four (4) years. The Court finds that the Product Fund of \$175 million
16 in Department Store Cosmetics created by the settlement is valuable, meaningful relief for the
17 Settlement Class.

18 12. The stipulation regarding conduct relief, attached hereto as Exhibit 2
19 and incorporated herein, is valuable, meaningful relief for the Settlement Class, and is hereby
20 approved and shall be entered and filed with the clerk forthwith.

21 13. At the hearing held on January 11, 2005, the Court asked for additional
22 information from the parties and invited them to consider modifications or additions to the
23 proposed plan of distribution. The parties provided the additional information in evidentiary
24 submissions to the Special Master, which are discussed in his recommendation and report
25 dated February 21, 2005. In addition, the parties, certain private objectors, and the objecting
26 states came to an agreement modifying the plan of distribution that is reflected in a filing
27 submitted on February 23, 2005 and referenced in the Special Master's February 21 report.

1 Only three private objectors continued to raise objections to the modified plan of distribution
2 and the Court considered both their written submissions and their oral arguments submitted at
3 the March 8, 2005 hearing. For the reasons stated by the Court at that hearing and for the
4 reasons identified by the Special Master in his February 21 report, the Court rejects all of their
5 objections.

6 14. In addition to the effect of any final judgment entered in accordance
7 with this Agreement, upon this settlement becoming final, Settling Defendants and their
8 present and former parents, subsidiaries, divisions, affiliates, officers, directors, employees,
9 agents and any of their legal representatives (and the present and former parents, subsidiaries,
10 divisions, affiliates, officers, directors, employees, agents and legal representatives, and the
11 predecessors, heirs, executors, administrators, successors and assigns of each of the
12 foregoing) shall be released and forever discharged from all manner of claims, demands,
13 actions, suits, causes of action, whether class, individual or otherwise in nature, damages
14 whenever incurred, liabilities, of any nature whatsoever, including costs, expenses, penalties
15 and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that any
16 member of the Settlement Class who has not timely excluded herself/himself from this action
17 (including any of their past, present or future agents, legal representatives, trustees, parents,
18 partners, estates, heirs, executors and administrators), and whether or not they object to the
19 settlement, ever had, now has, or hereafter can, shall or may have, arising out of conduct
20 during the Class Period by any Settling Defendant concerning the pricing, marketing,
21 distribution, promotion or advertising or sale of Department Store Cosmetic Products, and
22 which arise under any federal or state antitrust, unfair competition, unfair practices, price
23 discrimination, unitary pricing or trade practice law, or other similar law or regulation or
24 common law, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. §1, *et seq.*,
25 the Cartwright Act, Cal. Bus. & Prof. Code §16720, *et seq.*, the Unfair Practices Act, Cal.
26 Bus. & Prof. Code §17000, *et seq.*, and the Unfair Competition Act, Cal. Bus. & Prof. Code
27 §17200, *et seq.*, as well as any other federal or state law, statute or regulation concerning any
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of the aforementioned subjects. Nothing in the Settlement Agreement or in this Order is intended to release any other claim(s) that a Plaintiff or member of the Settlement Class may have against one or more of the Settling Defendants. For example, a personal injury or a product defect claim is not released. Nothing in the Settlement Agreement or in this Order is intended to release any claim(s) that any member of the Settlement Class may have against any other manufacturer or retailer of Department Store Cosmetic Products other than the Settling Defendants. Each member of the Settlement Class (including his or her past, present or future agents, legal representatives, trustees, parents, estates, heirs, executors and administrators), hereby covenants and agrees that he or she shall not hereafter assert any claim, demand, action, suit or cause of action, whether class or individual, against any Settling Defendant based, in whole or in part, upon any released claim.

15. Plaintiffs and Settlement Class members who have not excluded themselves from this litigation expressly waive the provisions of Section 1542 of the California Code of Civil Procedure (and all other like provisions of law) to the full extent that these provisions may be applicable to this release. California Code of Civil Procedure, Section 1542, provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each member of the Settlement Class may hereafter discover facts other than or different from those which she or he knows or believes to be true with respect to the claims being released pursuant to the provisions of Paragraph 13. Nevertheless, each member of the Settlement Class hereby expressly waives and fully, finally and forever settles and releases, upon this settlement becoming final, any known or unknown, suspected or unsuspected, contingent or noncontingent claim with respect to the subject matter of the claims being released pursuant to the provisions of Paragraph 13, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

1 16. Without affecting the finality of this Final Judgment, the parties,
2 including the Settling Defendants and the members of the class, have submitted to the
3 exclusive and continuing jurisdiction of this Court, and this Court reserves exclusive and
4 continuing jurisdiction over the Settlement Agreement, including the administration and
5 consummation of the settlement, the distribution of the free cosmetic products, the
6 enforcement of the Stipulated Order, and all other matters of and concerning or arising out of
7 this settlement or the products distributed thereunder.

8 17. The Settlement Agreement is expressly approved and incorporated
9 herein by this reference, and has the full force and effect of an order of this Court. The parties
10 shall consummate the Settlement Agreement according to its terms, as modified by the
11 February 23, 2005 Statement of the Parties, Coordinated Objectors and Objecting States.

12 18. Pursuant to Fed.R.Civ.P. 53(g)(1) and 54, and for the reasons stated on
13 the record at the hearing held on March 8, 2005, the Court hereby adopts the
14 recommendations of the Special Master concerning attorneys' fees and costs and hereby
15 enters this judgment awarding \$24 million in attorneys' fees and costs in this matter. This
16 sum shall be paid by defendants into an interest-bearing escrow account pursuant to the terms
17 of the Settlement Agreement. The Special Master, pursuant to the authority delegated to him
18 previously by the Court, shall make further recommendations as to how that sum shall be
19 allocated to any counsel who wishes to apply for a portion of the awarded fees. No sums shall
20 be distributed to any counsel in this case from the \$24 million award except pursuant to
21 further order of the Court.

22 19. Under Rule 54, Federal Rules of Civil Procedure, the Court, in the
23 interests of justice, there being no just reason for delay, expressly directs the Clerk of the
24 Court to enter this Judgment, Final Order and Decree, and hereby decrees that upon entry it be
25 deemed as a final judgment and appealable with respect to all claims by members of the class
26 against defendants Boucheron (USA) Ltd., Chanel, Inc., Christian Dior Perfumes, Inc.,
27 Clarins U.S.A., Inc., Conopco, Inc., L'Oréal USA, Inc. (formerly known as Cosmair, Inc.),
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The Estée Lauder Companies Inc., Guerlain, Inc., Parfums Givenchy, Inc., Dillard's, Inc., Federated Department Stores, Inc., Gottschalks Inc., The May Department Stores Company, The Neiman Marcus Group, Inc., Nordstrom, Inc., Saks Incorporated and Target Corporation, in accordance with the terms of the Settlement Agreement.

20. This Court directs the Clerk of the Court to maintain the record of those members of the Class who have timely excluded themselves from the Class for a period of five (5) years, and to provide a certified copy of such records to the Settling Defendants, at their expense.

21. As to each Settling Defendant, the class actions are dismissed with prejudice and, except as provided herein or in the Settlement Agreement, without costs.

Dated: March 30, 2005

/s/ Sandra Brown Armstrong
Honorable Sandra Brown Armstrong
United States District Court Judge
United States District Court for the Northern
District of California

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**EXHIBIT 1 TO "FINAL JUDGMENT"
(MASTER OPT-OUT LIST)**

51996.1

FINAL JUDGMENT GRANTING FINAL APPROVAL TO THE CLASS ACTION SETTLEMENT WITH
ALL DEFENDANTS AND AWARDED ATTORNEYS' FEES AND COSTS

AZIZIAN V. FEDERATED DEPARTMENT STORES
MASTER OPT-OUT LIST
04/05/04

OPT OUT	CLAIM #	REC'D DATE	NAME
00001	90000294	January 16, 2004	MARIE BARKER
00002	90014956	January 23, 2004	MICHAEL RIIKOLA
00003	90014963	January 29, 2004	BAMBY MOHAMED
00004	00464321	January 30, 2004	LORNA MITCHELL
00005	90014970	February 2, 2004	CARMELA TORRES
00006	90014989	February 2, 2004	KACIE L BEAGEN
00007	50166091	February 2, 2004	RUTH BEAGEN
00008	50181261	February 2, 2004	LUCILLE TUCKER
00009	90015007	January 26, 2004	PATRICIA LINDQUIST et al
00010	50063178	February 5, 2004	FLORENCE ARONSON
00011	90015014	February 6, 2004	NANCY TEATER
00012	00936439	February 9, 2004	RENEE LEVINE
00013	50008384	February 9, 2004	NANCY W CAPPELLINO
00014	90015724	February 9, 2004	MARILYN R HOWELL
00015	01086690	February 9, 2004	LISETTE M PADILLA
00016	90016516	February 10, 2004	NORMA M CRANDALL
00017	90017674	February 11, 2004	MARY ELLEN GOULD
00018	90019692	February 13, 2004	BONNIE J COMPTON
00019	90019708	February 16, 2004	TINA LARKIN
00020	90020407	February 17, 2004	MARIA BROWN
00021	01447033	February 17, 2004	TARA JAROIS
00022	90021428	February 20, 2004	RUBI MCGRORY
00023	90003837	February 20, 2004	GEORGIA BURNETT
00024	01565065	February 23, 2004	PAMELA D WILLIAMS
00025	90021879	February 23, 2004	WILLIAM BALFOUR
00026	50372751	February 27, 2004	NANCY SINCLAIR
00027	50045471	March 1, 2004	SHIRLEY PRADETTO
00028	01968156	March 1, 2004	TASSOULA E KOKKORIS
00029	00172723	March 2, 2004	CAROLYN PATZKOWSKI
00030	90014673	March 2, 2004	HOWARD WALSH
00031	50536788	March 5, 2004	LAUREL BEGAY
00032	90027864	March 5, 2004	TERESA LOERA
00033	90027840	March 5, 2004	DEBBIE BERNARDO
00034	90027857	March 5, 2004	MARY BETH CRONK
00035	01072723	March 8, 2004	MARY C MATTEO
00036	00811711	March 8, 2004	PATRICIA A ROACH
00037	90027895	March 8, 2004	DANIEL LAPLANTE
00038	90027901	March 8, 2004	JANET A JAYKUS
00039	02391861	March 12, 2004	AMANDA BAGNE
00040	50567300	March 15, 2004	KIM MCGARRY
00041	02346663	March 15, 2004	DIANE G MERCER
00042	90032172	March 15, 2004	STACY CHAN
00043	90032189	March 15, 2004	NANCY E MURRAY
00044	90032196	March 15, 2004	DAISY BECKETT
00045	90026126	March 17, 2004	SHARON L PLEW
00046	50190812	March 22, 2004	PATRICIE A DRAYTON
00047	50391813	March 22, 2004	BARBARA A BOLDEN

OPT OUT	CLAIM #	REC'D DATE	NAME
00048	90032202	March 23, 2004	KAREN SEAY
00049	90032219	March 23, 2004	RUTH BROERS
00050	02951300	March 26, 2004	SUZANNE M BRATHOL
00051	90032226	March 26, 2004	MARIA SUAREZ
00052	90032233	March 26, 2004	CURTIS LANDON SCHLOSS
00053	01879018	March 26, 2004	ALISON L COX
00054	02446295	March 29, 2004	JUDY L TEMME
00055	50456246	March 29, 2004	RENEE L JONES
00056	02971353	March 29, 2004	WENDY E KEITH
00057	02446295	March 29, 2004	JUDY L TEMME
00058	02446295	March 29, 2004	JUDY L TEMME
00059	50446230	March 29, 2004	MARIE APICHELLA
00060	90032479	March 29, 2004	SONIA IRWIN
00061	90032622	March 30, 2004	SUSAN BONGARD
00062	90032639	March 30, 2004	SONYA BUSH

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**EXHIBIT 2 TO "FINAL JUDGMENT"
(STIPULATED ORDER)**

51996.1

FINAL JUDGMENT GRANTING FINAL APPROVAL TO THE CLASS ACTION SETTLEMENT WITH
ALL DEFENDANTS AND AWARDED ATTORNEYS' FEES AND COSTS

FATEMAH AZIZIAN, et al.
Plaintiffs,
vs.
FEDERATED DEPARTMENT STORES,
INC., et al.
Defendants.

I. **General Terms and Conditions.**

51996.1

1 *al.*, Docket No. C 03 3359 (the “Federal Action”); or (ii) their Amended Consolidated
 2 Complaint filed on May 17, 2000, or any other complaint previously filed by them, in the
 3 Superior Court for the State of California, County of Marin.

4 B. This Stipulated Order, along with each of its terms and conditions, shall
 5 not become effective unless and until it is entered by order (“Approval Order”) of the United
 6 States District Court for the Northern District of California or any transferee court thereof (the
 7 “United States District Court”), and shall expire and cease to apply three (3) years after the
 8 date on which such Approval Order is entered.

9 C. The United States District Court has jurisdiction over the subject matter
 10 of this Stipulated Order and over the parties hereto pursuant to Section 1 of the Sherman Act
 11 and Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 1, 15 and 26).

12 D. For purposes of this Stipulated Order, the following definitions shall
 13 apply:

- 14 1. “Department Store Cosmetics” or “Products” mean the full range of
 15 high-end, “prestige” or specialty beauty and cosmetic products and
 16 product lines (whether established, discontinued or new), including, but
 17 not limited to, color products, treatments and fragrances which are or
 18 were manufactured, distributed and/or sold by the Manufacturer
 19 Defendants (as that term is defined below) or the Department Store
 20 Defendants (as that term is defined below) under various brand names.
 21 Department Store Cosmetics are sold to Retail Stores (as that term is
 22 defined below), who, in turn, sell such products to retail customers such
 23 as the Plaintiffs. The term “Department Store Cosmetics” excludes
 24 products and product lines sold principally through mass distribution
 25 channels, and, for each Manufacturer Defendant is limited to its
 26 discontinued and current product groups and brands, as well as any new
 27 brands which would otherwise be under the definition of Department
 28 Store Cosmetics during the period that the Order is effective pursuant
 to Section II., below.
2. “Department Store Defendant” means each entity named as a defendant
 in the Federal Complaint which is also a signatory to this Stipulated
 Order and which purchases Department Store Cosmetics from one or
 more Manufacturers (as that term is defined below), including the
 Manufacturer Defendants (as that term is defined below), and, in turn,
 resells such cosmetics to retail customers such as the Plaintiffs.
3. “Retail Store” means each company or entity, including but not limited
 to the Department Store Defendants, which sells Department Store
 Cosmetics to retail customers such as the Plaintiffs.

4. "Manufacturer Defendant" means each entity named as a defendant in the Federal Complaint which is also a signatory to this Stipulated Order and which manufactures, distributes and/or sells Department Store Cosmetics to Retail Stores, including the Department Store Defendants, who, in turn, resell such cosmetics to retail customers such as the Plaintiffs.
5. "Manufacturer" means each company, including but not limited to the Manufacturer Defendants, which manufactures, distributes and/or sells Department Store Cosmetics to Retail Stores, including the Department Store Defendants, who, in turn, resell such cosmetics to retail customers such as the Plaintiffs.
6. "Manufacturer's Suggested Retail Price" (or "MSRP") means the price that a Manufacturer suggests, at any given time, to a Retail Store as being the price at which that Retail Store resells the Manufacturer's Product to retail customers such as the Plaintiffs, and shall not mean a "Qualifying Amount" as that term is defined below.
7. "Resale Price" means the price or price level at which Department Store Cosmetics are sold to retail customers such as the Plaintiffs, whether or not the price or price level is the same as the MSRP.
8. "Agreement" means a contract, combination or conspiracy which would constitute concerted conduct under federal judicial precedent concerning Section 1 of the Sherman Act (15 U.S.C. §1). In addition, the legal principles set forth in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), as well as subsequent federal judicial precedent applying those legal principles, shall apply to this Stipulated Order.
9. "Cooperative Advertising" means any advertising or advertising program pursuant to which a Manufacturer pays the cost, in whole or in part, of advertising by a Retail Store for the Manufacturer's Department Store Cosmetics.
10. "Promotion" means any gift-with-purchase, purchase-with-purchase, launch or similar promotion of Department Store Cosmetics that may, from time-to-time be made available to Retail Stores, the cost of which is paid in whole or in part by the Manufacturer whose Products are the subject of the Promotion.
11. "Qualifying Amount" means the amount which any Manufacturer Defendant determines is the amount which any retail customer must pay in order to receive the benefit associated with any Promotion.

II. Specific Conditions.

A. Department Store Defendants.

1. Each of the undersigned Department Store Defendants, its successors and assignees, its officers, directors, agents, representatives and employees, or through any parent, subsidiary or affiliated corporation, division or other device, in connection with the advertising, offering for

1 sale, sale or distribution of Department Store Cosmetics, is prohibited
2 from entering into any Agreement with any Manufacturer:

- 3 a. To fix, establish, control or maintain the Resale Price, including
4 any MSRP, at which any Department Store Defendant may
5 offer for sale or sell any Products;
- 6 b. To maintain, adopt or adhere to any resale price for any
7 Products;
- 8 c. To secure any commitment or assurance from any other
9 Department Store Defendant concerning the resale price at
10 which that Department Store Defendant may offer for sale or
11 sell any Products; or
- 12 d. To prohibit any Department Store Defendant from advertising
any Manufacturer Defendant's Products at a Resale Price less
than the Manufacturer's Suggested Retail Price, or to prohibit
any other Department Store Defendant from advertising any
Manufacturer Defendant's Products at a Resale Price less than
the Manufacturer's Suggested Retail Price, provided that this
subparagraph (d) does not apply to any advertising done
pursuant to a Cooperative Advertising program.

13 2. Provided, however, that nothing in this Stipulated Order shall prohibit
14 any contract or understanding between any Department Store
15 Defendant and a Manufacturer (or any unilateral conduct by a
16 Department Store Defendant) concerning:

- 17 a. The amount of Product that said Department Store Defendant
18 purchases at one time or in any single order from any
19 Manufacturer;
- 20 b. The number or dollar amount of Products that may be sold by
21 any Department Store Defendant at one time to any single
22 customer of the Department Store;
- 23 c. The terms and conditions of any Promotion, including the
24 Qualifying Amount or the number or value of any gift(s) or
25 other component(s) of the Promotion;
- 26 d. Purchasing a Manufacturer's Products at a wholesale price
27 which is determined by a fixed percentage of the MSRP for
28 such Products;
- e. Selling a Manufacturer's Products at that Manufacturer's MSRP
based on the unilateral decision of a Department Store
Defendant and in the absence of any Agreement enumerated in
Paragraph II.A.1. herein;
- f. Establishing terms or conditions of the sale or resale of any
Products other than Resale Price, such as credits, backorders,
returns and opening orders; or

- g. Establishing exclusive or limited distribution periods with respect to any Manufacturer's Products or Promotions of its Products, including but not limited to exclusive or limited distribution periods in which: (i) only one Manufacturer's Promotion is run by a Department Store Defendant on any given date(s); or (ii) a Manufacturer does not offer any Promotion at any Department Store Defendant's retail store on the same date(s) as that Manufacturer's Promotion is offered at another Retail Store.

B. Manufacturer Defendants.

1. Each undersigned Manufacturer Defendant, its successors and assignees, its officers, directors, agents, representatives and employees or through any parent, subsidiary or affiliated corporation, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of that Manufacturer Defendant's Products, is prohibited from entering into any Agreement with any Retail Store:
 - a. To fix, establish, control or maintain the Resale Price, including any MSRP, at which any Department Store Defendant may offer for sale or sell any Products;
 - b. To maintain, adopt or adhere to any resale price for any Manufacturer Defendant's Products;
 - c. To secure any commitment or assurance from any Department Store Defendant concerning the resale price at which such Department Store Defendant may offer for sale or sell any Products; or
 - d. To prohibit any Department Store Defendant from advertising any Manufacturer Defendant's Products at a Resale Price less than the Manufacturer's Suggested Resale Price, or to prohibit any other Department Store Defendant from advertising any Manufacturer Defendant's Products at a Resale Price less than the Manufacturer's Suggested Resale Price provided that this subparagraph (d) does not apply to any advertising done pursuant to a Cooperative Advertising program.
2. Each Manufacturer Defendant is also prohibited from:
 - a. Suggesting or recommending an MSRP or Resale Price to any Department Store Defendant in writing on any price list or order form unless it clearly states the following caveat on each page of such list or form: "The Retail Prices Quoted Herein Are Suggested Only. You Are Completely Free to Determine Your Own Retail Prices";
 - b. Requiring any Department Store Defendant to report the identity of any other Department Store Defendant which resells that Manufacturer Defendant's Products below the Manufacturer Defendant's Suggested Resale Price, provided that it shall not constitute a violation of this Stipulated Order for a Manufacturer Defendant to receive an unsolicited report from

- any Department Store Defendant as to the identity of any other Department Store Defendant which has sold that Manufacturer Defendant's Products below the Manufacturer Defendant's Suggested Resale Price;
- c. Taking objectively baseless action under applicable legal precedent to hinder or preclude the lawful use by any Department Store Defendant of any brand name, trade name or trademark of any Manufacturer Defendant because of the sale or advertising of any Department Store Cosmetics at any resale price;
 - d. Conducting any surveillance program to determine whether any Department Store Defendant is advertising, offering for sale or selling any Department Store Cosmetics at any Resale Price, where such surveillance program is conducted to fix, maintain, control or enforce the Resale Price at which any Department Store Cosmetics are sold or advertised;
 - e. Making any payment or granting any other benefit to any Department Store Defendant in consideration for the Department Store Defendant's agreement to sell or advertise any Department Store Cosmetics at MSRP, except in connection with any Cooperative Advertising program or any conduct, agreement or understanding referenced in Section III.B.3. below; or
 - f. Agreeing upon the prices for new cosmetic Products with any other Manufacturer Defendant.
3. Provided, however, that nothing in this Stipulated Order shall prohibit any contract or understanding between any Manufacturer Defendant and a Retail Store (or any unilateral conduct by a Manufacturer Defendant) concerning:
- a. The amount of Products that any Retail Store purchases at one time or in any single order from any Manufacturer Defendant;
 - b. The number or dollar amount of Products that may be sold by any Retail Store at one time to any single customer of the Retail Store;
 - c. The terms and conditions of any Promotion, including the Qualifying Amount or the number or value of any gift(s) or other component(s) of the Promotion;
 - d. Selling that Manufacturer Defendant's Products at a wholesale price which is determined by a fixed percentage of the Manufacturer Defendant's Suggested Resale Price for such Products;
 - e. Establishing terms or conditions of the sale or resale of any Products other than Resale Price, such as credits, backorders, returns and opening orders; or

- f. Establishing exclusive or limited distribution periods with respect to that Manufacturer Defendant's Products or Promotions of its Products, including but not limited to exclusive or limited distribution periods in which: (i) only one Manufacturer Defendant's Promotion is run by a Retail Store on any given date(s); or (ii) that Manufacturer Defendant does not offer any Promotion at one Retail Store on the same date(s) as its Promotion is offered at another Retail Store.

III. Additional Provisions.

A. Nothing in this Stipulated Order shall be construed to prohibit a Department Store or Manufacturer Defendant from entering into any agreement or understanding, or engaging in any conduct, not prohibited by this Stipulated Order.

B. This Stipulated Order has no application to any claims(s) that Plaintiffs may have against any Retail Store(s) or Manufacturer(s) that has not signed this Stipulated Order (collectively "Non-Signatories"). Accordingly, nothing in this Stipulated Order may be construed as limiting Plaintiffs' right to claim that any policy, practice, agreement or conduct of or by any Non-Signatory ("Non-Signatory Conduct") is violative of any federal or state antitrust law, or any other applicable law, irrespective of whether the Non-Signatory Conduct at issue is: (a) pursuant to an agreement with a Department Store Defendant or Manufacturer Defendant; or (b) otherwise related to or associated with a policy, practice, agreement or conduct of or by a Department Store Defendant or Manufacturer Defendant.

C. Nothing in this Stipulated Order shall be construed in a manner that is inconsistent with the terms of the parties' Settlement Agreement.

IV. Distribution of this Stipulated Order.

A. Within thirty (30) days after entry of this Stipulated Order, each Manufacturer Defendant shall mail the attached Exhibit A to the main office of each Retail Store in the United States of America to whom said Manufacturer Defendant sells Products. An affidavit shall be sworn to by an official of said Manufacturer Defendant verifying that the attached Exhibit A was so mailed and filed with this court within ten (10) days after mailing;

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EXHIBIT A TO PROPOSED STIPULATED ORDER

51996.1

FINAL JUDGMENT GRANTING FINAL APPROVAL TO THE CLASS ACTION SETTLEMENT WITH
ALL DEFENDANTS AND AWARDED ATTORNEYS' FEES AND COSTS

1 [Mailing instructions]

2 [Addressee information]

3 Re: [Reference]

4 Dear Retailer:

5
6 This letter is intended to remind you of certain aspects of our Company's
7 practices concerning the sale of its prestige or specialty beauty and cosmetic products
8 ("Products") to your stores:

- 9 1. The Company may, in its discretion, provide you with a suggested
10 resale price for its Products. Any such price is a suggested price only;
11 you are completely free to determine your own retail prices. The
12 Company will not enter into any agreement with you (and will not
13 require or solicit any commitment or assurance from you) concerning
14 the retail prices at which you sell the Company's Products.
- 15 2. Notwithstanding anything above, with respect to any advertising or
16 advertising program for Products which is paid, in whole or in part, by
17 the Company ("Cooperative Advertising"), the Company reserves the
18 right to set terms and conditions related to such advertising (including
19 but not limited to the price at which Products will be advertised).
- 20 3. With respect to any advertising of the Company's Products other than
21 Cooperative Advertising, the Company may suggest the price at which
22 its Products will be advertised, and any such suggestion will be
23 considered a suggested resale price within the meaning of paragraph
24 number (1) above.
- 25 4. This letter is not intended to affect or supersede any policies, practices
26 or guidelines which the Company has established or may in the future
27 establish with respect to any terms or conditions of sale or resale of its
28 Products not specifically referenced in this letter.

29 If you have any questions regarding the contents of this letter, please contact
30 the undersigned by phone, mail or email as specified below.

31
32 [Closing]

33
34 [Sender's name]